

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 341 of 1997

with

CRIMINAL REVISION APPLICATION NO. 382 OF 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

SURESH IDANDAS PREMANI

Versus

JAYENDRAKUMAR BHUDARBHAI BRAHMBHATT

Appearance:

CR.REV.APPLN. NO. 341/97

MR JB DASTOOR for Petitioners

MR YV BRAHMBHATT for respondent no.1

MR SA PANDYA, APP for the respondent-State.

SERVED FOR RESPONDENT NO.2

CR.REV.APPLN. NO. 382/97

MR YV BRAHMBHATT for petitioner

MR ST MEHTA, APP for respondent-State

MR JB DASTOOR for respondent nos.2 & 3

SERVED for Respondent No. 4

CORAM : MR.JUSTICE N.J.PANDYA

Date of decision: 02/09/97

COMMON ORAL JUDGEMENT

Rule. Ld.APPs Shri S.A.Pandya and Shri S.T.Mehta waive the service of Rule for the respondent-State in each matter and Ld.Advocate Shri Y.V.Brahmbhatt waives the same for respondent no.1 in Criminal Revision Application No.341 of 1997 and Ld.Advocate Shri J.B.Dastoor waives the service of Rule for the respondents nos.2 and 3 in Criminal Revision Application No.382 of 1997.

These two Revision Applications arise out of an order of the ld.JMFC, Kalol, who was approached by the respective petitioners in Criminal Revision Application No.341 of 1997 with a prayer of return of muddamal article, namely, a Maruti Van bearing Regn. No.GT-2-9133. The application was, of course, under Section 457 of the Code of Criminal Procedure. The complaint came to be registered as M.Case No.4 of 1997 before the said Court by the respondent no.1 in Criminal Revision Application No.341 of 1997, in respect of the said vehicle against the respondent no.2 of the said Application on the ground that an offence under Section 406 or under Section 420 of IPC has been committed by the said respondent.

The facts are that, somewhere prior to 15.2.1996, the said vehicle was sold by the respondent no.2 to the respondent no.1. Part payment was made and subsequently, by the time the offence was committed, the entire amount was also paid.

The vehicle, however, continued to remain in the name of the respondent no.2 in the RTO record. The respondent no.2 in ordinary course, would have transferred the vehicle in the name of respondent no.1, but the fact that after the purchase the said respondent had to spend about Rs.28,000/- towards the repairs, he wanted to sell away the vehicle.

According to the respondent no.1, respondent no.2 gave him an assurance that, instead of getting the vehicle transferred in the name of respondent no.1, straightway it may be sold and double expenditure may be avoided and relying on him, the respondent no.1 handed over the vehicle to respondent no.2. According to the case of the complainant-respondent no.1, the respondent no.2 sold the vehicle, but did not return the money to

the respondent no.1.

The petitioners of Criminal Revision Application No.341 of 1997 are the purchasers of the said vehicle. They had purchased the said vehicle on or about 5.8.1996.

Looking to the tenor of the complaint, it is obvious that, though according to the complainant-respondent no.1, he had purchased the vehicle from the respondent no.2 and for all intentent purpose, he was the owner, relying upon the representation of the respondent no.2, he had handed over the vehicle to him for re-selling it, which he did. However, as expected of respondent no.2, instead of giving the money back to the respondent no.1, he pocketed the same. This would thus lead to the offence. As far as the petitioners of Criminal Revision Application No.341 of 1997 are concerned, they are the purchasers from the respondent no.2, who had the authority of the respondent no.1 as per the complaint itself.

As if this is not enough, the vehicle in question was found in possession of the said two petitioners of Criminal Revision Application No.341 of 1997.

The ld. JMFC, after hearing all the parties, rejected the application for muddamal article. The police, strangely enough, had been in favour of the complainant and had categorically expressed an opinion that the same had to be handed over to the complainant-respondent no.1.

In the aforesaid background, till the trial is over, the complainant will have to wait for because, he has, on his own permitted the respondent no.2 to sell the vehicle in question and to give the money to him. By filing a complaint, using it as a device, he cannot get the vehicle back.

Apart from anything else, when the position was that the petitioners of Criminal Revision Application No.341 of 1997 and in the aforesaid background even the vehicle is in the name of the applicants in the RTO record with entry of 5.8.1996, obviously, prima facie, the claim over the vehicle for custody will have to be decided in their favour.

The respondent no.1 is relying upon a writing of 29.9.1996 where the respondent no.2 is said to have stated that the vehicle is lying in garage for repair and he has not sold it to anyone else nor he will sell it to

anybody and obviously, this is not the correct factual position because, the vehicle came to be sold on 5th August 1996, much prior to the said date of writing.

The remarks made in this order regarding the custody of the vehicle will have no bearing whatsoever on the crime alleged to have been committed. The trial Court shall deal with the case and conduct the inquiry as to the commission or otherwise of the offence in accordance with law, without in any way, being influenced by any of the observations made above.

So far as the Revision Applications are concerned, the revision of original complainantrespondent no.1 being Criminal Revision Application No. 382 fails and the revision of the original applicants for the vehicle being Criminal Revision Application No.341 of 1997 succeeds. Rule is made absolute in Criminal Revision Application No.341 of 1997 and Rule is discharged in Criminal Revision Application No.382 of 1997. The vehicle bearing Regn. No. GJ-2-913 shall be handed over by way of custody to the applicants of Criminal Revision Application No.341 of 1997 on the following conditions:

1. They shall execute a bond of Rs.1,00,000/- (Rupees One Lakh only) to the satisfaction of the trial Court.
3. They shall keep the vehicle in question in good running condition and shall not transfer the same or alienate in any manner or create any encumbrance thereon without the prior permission of the trial Court.
3. The vehicle shall be produced before the trial Court as and when so called for by the trial Court.

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